

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

4-15CV-542-0

ORVILLE TOOTHMAN,
157 Terry Street
Farmington, Arkansas 72730

Plaintiff,

-vs-

UNITED STATES OF AMERICA,
c/o Office of the
United States Attorney
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

Defendant.

Case No. _____

COMPLAINT

Orville Toothman, Plaintiff herein, proceeding *pro se*,
here-with complains against Defendant United States of America,
pur-suant to *Federal Tort Claims Act*, 28 U.S.C. § 1346 *et. seq.*

1. *Parties:* Plaintiff Orville Toothman was at all times
relevant to this *Complaint* and remains a resident of the City of

2. Defendant United States of America is a body politic which, for purposes of this litigation, operates through its executive branch an agency of government known as the United States Department of Justice. The Federal Bureau of Prisons ("BOP") is a component agency of said Department of Justice. The BOP is custodian of persons convicted of Federal offenses and sentenced to incarceration, and – among other functions – provides health care and medical treatment to persons in its custody.

3. *Jurisdiction and Venue:* This action arises under the *Federal Tort Claims Act*, 28 U.S.C. § 2671 *et seq.* The acts and omissions complained of herein occurred between January 1, 2011, and June 30, 2012 (hereinafter referred to as "the Relevant Period"). On or about December 30, 2014, Plaintiff filed an administrative claim with the BOP on Department of Justice Standard Form 95, which claim was assigned Tort Claim No. TRT-SCR-2015-01865. The BOP denied the aforesaid tort claim by letter dated January 28, 2015. Plaintiff thus has exhausted administrative remedies pursuant to 28 U.S.C. § 2675(a).

4. This Court has jurisdiction of the instant action pursuant to 28 U.S.C. § 1331 – because this case arises under the *Federal Tort Claims Act* – and 28 U.S.C. § 1346, in that this Court has original jurisdiction over all claims against the

United States of America and its various agencies, including the BOP.

5. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1402(b), in that the plaintiff currently resides in this judicial district. During the Relevant Period, Plaintiff was incarcerated by the BOP (with Inmate Register No. 08086-010) at the low facility at the Federal Correctional Institution — Ft. Worth (hereinafter "FCI Fort Worth"), located in the County of Tarrant, within the bounds of this judicial district. The errors and omissions complained of herein were committed at said FCI Fort Worth.

COUNT 1

6. Plaintiff incorporates by reference all prior allegations as if fully set forth herein.

7. Defendant, the United States of America, owed a duty to Plaintiff to provide him with competent, safe and acceptable medical care and treatment, and to do so in accordance with the applicable standard of care governing the provision of said treatment and care.

8. This claim arises from failure of officers, agents and employees of an agency of the United States, the BOP, to provide Plaintiff with the level of care reasonably necessary to address uncontrolled his various eye disorders, including without

limitation intraocular pressure in his eyes. Such services are provided, and were in this case provided, by medical professionals ("LMPs") appropriately licensed by the State of Texas, who were at all times relevant to this Complaint employees of the BOP, and acting within the scope of their employment.

9. Plaintiff was treated by LMPs for eye disorders throughout his incarceration. At all times since Plaintiff arrived at FCI Fort Worth, the BOP health services LMPs knew and reasonably knew that he had suffered and continued to suffer from retinopathy of prematurity (ROP) and poor visual acuity since birth, and that at all times relevant to his claim, Plaintiff suffered from macular degeneration, glaucoma and retinopathy.

10. On or about April 5, 2011, Plaintiff was evaluated by a licensed medical professional who was an independent contractor of the BOP, selected, guided and paid by the BOP. That medical professional expressed concern over worsening pressure inside Plaintiff's eyes, and rendered medical advice to the FCI Fort Worth LMPs that Plaintiff be treated with medications and a follow-up appointment in three weeks.

11. It is the responsibility of the FCI Fort Worth staff and within the standard of care applicable to the FCI Fort Worth Health Services staff's duties toward Plaintiff that said staff

is responsible to schedule all necessary appointments with the Health Services and the medical professionals who provide services pursuant to contract. Nevertheless, the FCI Fort Worth Health Services staff did not schedule follow-up appointment ordered by the consulting medical professional in April 2011.

12. On or about June 28, 2012, Plaintiff was examined by an ophthalmology physician providing services to FCI Fort Worth pursuant to contract. That physician, who also was concerned about intraocular pressure, directed that Plaintiff be evaluated promptly by the Eye Clinic at John Peter Smith Hospital, Fort Worth, Texas. Despite his directive, the FCI Fort Worth Health Services staff did not schedule such an evaluation. Plaintiff's repeated expressions of concern for his deteriorating vision and the lack of a timely evaluation led to his filing multiple administrative remedy requests. Only after the repeated filing of these requests did the FCI Fort Worth Health Services LMPs finally attempt to schedule the requested evaluation. The FCI Fort Worth LMPs' attempt to set an appointment was made on or about September 24, 2012.

13. Plaintiff's vision continued to deteriorate during the period from June 28, 2012, through the end of 2012. The appointment first sought in September 2012 did not occur until January 2013, despite the fact that the FCI Fort Worth Health

Services staff knew and reasonably knew that Plaintiff's vision was steadily deteriorating over the period from April through December 2012, and that its consulting medical professionals had previously expressed concern that such deterioration was the foreseeable result of Plaintiff not being provided with the recommended medical services in a timely manner. During this period, FCI Fort Worth Health Services exhibited deliberate indifference to Plaintiff's medical needs.

14. The evaluation requested September 24, 2012, finally occurred on January 8, 2013. By this point, Plaintiff had suffered grave deterioration to his vision due to intraocular pressure. When licensed medical practitioners at John Peter Smith Hospital evaluated Plaintiff on January 8, 2013, they concluded that because of the lapse of time since the last appointment, which occurred June 28, 2012, Plaintiff's vision deterioration was irreversible, and he was permanently blind.

15. Although his sight was limited prior to June 28, 2012, Plaintiff was able to read, navigate and perform all basic functions requiring sight. Between June 28, 2012, and January 8, 2013, he lost those abilities.

16. The LMPs at FCI Fort Worth provided Plaintiff with treatment that fell below the reasonably accepted standards of care, and they were negligent. As a result, Plaintiff did not

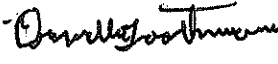
receive timely treatment necessary to preserve his sight, and be was blinded.

17. Had Plaintiff received the timely treatment which the FCI Fort Worth LMPs knew and reasonably knew was necessary to preserve his sight, Plaintiff would not have lost his sight.

18. As a direct and proximate result of the aforementioned negligence and breach of the applicable standard of care on the part of The United States of America and its employees, Plaintiff suffered and has continue to suffer from permanent blindness, and has incurred and continues to incur substantial and continuing medical and other expenses.

WHEREFORE, this Complaint should be granted, judgment should be entered in favor of Plaintiff in the amount of the lesser of \$1 million or the amount demanded in the aforesaid Tort Claim No. TRT-SCR-2015-01865, costs should be assessed against Defendant, and the Court should grant such additional relief to Plaintiff as is appropriate in the premises.

Executed July 20, 2015

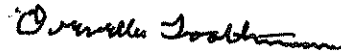


Orville Toothman
157 Terry Street
Farmington, Arkansas 72730
(479) 267-4903

[VERIFICATION ON FOLLOWING PAGE]

VERIFICATION

I have had the entire foregoing *Complaint* read aloud to me. The statements of fact set out herein are true to the best of my knowledge and belief, unless identified as being made pursuant to information and belief, and — as to such statements — I verily believe them to be true. I declare under penalty of perjury that the foregoing is true and correct. Executed on July 20, 2015.



Orville Toothman

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Orville Toothman

DEFENDANTS

United States of America

(b) County of Residence of First Listed Plaintiff Washington County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Pro se, 157 Terry Street
Farmington, Arkansas 72730 -
(479) 267-4903, jenlramey07@yahoo.com

Attorneys (If Known)
United States Attorney for the Northern District of Texas, Civil Desk,
1100 Commerce Street, Third Floor, Dallas, Texas 75242-1699

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1346

Brief description of cause:

Medical malpractice against Federal Bureau of Prisons pursuant to Fed. Tort Claims Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/22/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE